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DEPARTMENT OF COMMERCE

International Trade Administration

[C-580-882]

Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Notice of Court Decision not in Harmony with Amended Final Determination of the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 10, 2018, the United States Court of International Trade (CIT or Court) sustained the final remand results pertaining to the countervailing duty (CVD) investigation on certain cold-rolled steel flat products from the Republic of Korea covering the period January 1, 2014, through December 31, 2014. The Department of Commerce (Commerce) is notifying the public that the final judgement in this case is not in harmony with the *Amended Final Determination* of the CVD investigation and that Commerce is amending the *Amended Final Determination* with respect to the CVD rate assigned to POSCO.

DATES: Applicable September 20, 2018.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas at (202) 482-3813, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2016, Commerce published its *Final Determination*.¹ Upon consideration of ministerial error allegations, Commerce issued an *Amended Final Determination* and calculated a subsidy rate of 59.72 percent for POSCO.²

On March, 8, 2018, the CIT remanded various aspects of the *Amended Final Determination* to Commerce.³ In its *Remand Order*, the Court held that “substantial evidence supports Commerce’s decision to apply facts available.”⁴ The Court held that the record demonstrated that POSCO “withheld information, failed to timely provide information, and impeded the proceeding” and that POSCO’s “failure to supply the requested information” reflected a failure to act to the best of its ability.⁵

However, the Court also held that Commerce had not conducted an “evaluation of the specific situation,” under the relatively new statutory language of section 776(d)(2) of the Tariff Act of 1930, as amended (the Act) and had not explained “why this case justified its selection of

¹ See *Final Determination*, 81 FR 49943.

² See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016) (*Final Results*) and accompanying Memorandum, entitled “Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea” (Issues and Decision Memorandum); see also “Countervailing Duty Investigation of Certain Cold-Rolled Steel flat Products from the Republic of Korea: Final Determination Calculation Memorandum for POSCO, dated July 20, 2016 (POSCO Final Analysis Memorandum). On September 20, 2016, the Commerce published its amended final results upon consideration of various ministerial error allegations. See *Certain Cold-Rolled Steel Flat Products from Brazil, India, and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (the Republic of Korea) and Countervailing Duty Orders (Brazil and India)*, 81 FR 64436 (September 20, 2016) (*Amended Final Results*); see also “Response to Ministerial Error Comments Filed by Hyundai Steel Co. Ltd. and POSCO,” dated August 24, 2016 (Ministerial Error Memo); and “Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Amended Final Determination Calculation Memorandum for POSCO,” dated August 24, 2016 (POSCO Amended Final Analysis Memorandum).

³ See *POSCO et al., and AK Steel Corporation, et al., v. United States and Steel Dynamic Inc., et al.*, Consol. Court No. 16-00225, Slip Op. 18-18 (CIT 2018) (*Remand Order*).

⁴ See *Remand Order* at 26.

⁵ *Id.* at 26-27.

the highest rates.”⁶ In addition, the Court concluded that the 1.64 percent rate from *Refrigerators from Korea* was “derived from estimates Commerce made on the basis of an adverse inference,” and, therefore, was not corroborated, under section 776(c) of the Act.⁷ The Court, therefore, instructed Commerce to reconsider its selection of this rate.⁸ On the other hand, the Court found that Commerce’s corroboration and selection of the 1.05 percent rate from *Washers from Korea* was supported by substantial evidence.⁹

Pursuant to the *Remand Order*, Commerce issued its Final Redetermination, which addressed the Court’s holdings and revised the CVD rate for POSCO to 42.61 percent.¹⁰ On September 10, 2018, the CIT sustained in whole Commerce’s Final Redetermination.¹¹

Timken Notice

In its decision in *Timken*,¹² as clarified by *Diamond Sawblades*,¹³ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Act, Commerce must publish a notice of court decision that is not “in harmony” with Commerce’s determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s September 10, 2018 final judgement, ordering Commerce to proceed with replacing POSCO’s 1.64 percent subsidy rate for programs that were calculated on the basis of adverse facts available with the

⁶ *Id.* at 49.

⁷ *Id.* at 57-58. See also *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012) (*Refrigerators from Korea Final Determination*) and accompanying Issues and Decision Memorandum (*Refrigerators from Korea Issues and Decision Memorandum*).

⁸ *Id.* at 58.

⁹ *Id.* See also *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers from Korea Final Results*), and accompanying Issues and Decision Memorandum (*Washers from Korea Issues and Decision Memorandum*).

¹⁰ See Memorandum *POSCO et al., and AK Steel Corporation, et al., v. United States and Steel Dynamic Inc., et al.*; Consol. Court No. 16-00225, Slip Op. 18-18 (CIT March 8, 2018); Final Results of Redetermination Pursuant to Court Remand, dated June 6, 2018, at 26.

¹¹ See *POSCO et al., and AK Steel Corporation, et al., v. United States and Steel Dynamic Inc., et al.*; Consol. Court No. 16-00225, Slip Op. 18-1115 (CIT September 10, 2018).

¹² See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹³ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

1.05 percent rate from *Washers from Korea* constitutes a final decision of that court that is not in harmony with the *Final Amended Determination*. This notice is published in fulfillment of the publication requirements of *Timken*.

This notice is issued and published in accordance with sections 516A(e)(1), 705(c)(1)(B), and 777(i)(1) of the Act.

Dated: September 19, 2018.

James Maeder,

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for Antidumping and Countervailing Duty Operations

performing the duties of Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations.

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